

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No.3399/2025

Reserved on: 14.05.2026
Pronounced on: 30.05.2026
Uploaded on: 30.05.2026

M/s RKG LNA IPL JV

....Petitioner(s)

Through :- Mr. Rahul Pant, Sr. Advocate with
Ms/ Amit Bhardwaj & Anirudh Sharma,
Advocates

V/s

Union Territory of J&K and others

....Respondent(s)

Through :- Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Advocate
Mr. R.K.Gupta, Sr. Advocate with
Mr. Udhay Bhaskar, Advocate

CORAM: HON'BLE MS.JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1. By this petition, the petitioner herein has sought quashing of the decision dated 20.11.2025, taken by the respondent, whereby the bid submitted by the petitioner in pursuance of e-NIT No.22 of 2025-26 dated 27.09.2025 for the work "Pollution Abatement and Conservation of River Jhelum at Chuntkul and Gawakadal area in Srinagar (J&K)" under NRCP including 12 months of free trial run and 05 years of O&M after free trial run, has been technically rejected/declared non-responsive. Petitioner is also seeking a direction upon the respondents to declare its bid as responsive technically, to open the financial bid

and to award the contract in question to L-1 after opening the financial bid of the petitioner as well.

Factual Matrix

2. The petitioner is a joint venture of M/s LNA Infra Projects Pvt. Ltd., a company duly incorporated under the Companies Act. M/s R.K.Gupta & Co. is a registered partnership firm having its registered office at H.No.50-B, Sector-A, Subash Nagar, Jammu.
3. E-NIT No.22 of 2025-26 dated 27.09.2025 came to be issued by respondent No.3-Executive Engineer, S&D Division 1st Urban Environmental Engineering Department, Srinagar, thereby inviting bids/tenders comprising of two covers A&B from the eligible bidders for “Pollution Abatement and Conservation of River Jhelum at Chuntakul and Gawkadal areas in Srinagar (J&K)” under NRCP including 12 months of free trial run and 5 years of O&M after free trial run. The estimate cost of the work was shown to be Rs.55.11 crores and estimated cost of operation and maintenance (O&M) was indicated as Rs.6.45 crores. Thus, total estimate cost of the project was Rs.61.56 crores. To be eligible to participate in the bidding process, bidder was required to be a registered company/firm/super class contract in terms of standing rules and renewed for the current financial year 2025-26 . Even Joint Ventures were eligible to apply for the work in question. In terms of the e-NIT, following was the eligibility criteria fixed in the e-NIT:

“2. ELIGIBILITY CRITERIA FOR BIDDERS

Qualifying Requirement:

I. Should be registered company under Companies Act/partnership/proprietor firm/LLP/JV etc with registered office in India.

II. Construction Experience

A. In case Bidder is applying as Single Entity/Individual contractors—

i. General Construction Experience

Successfully completed similar works during last Ten years ending last day of month previous to the one in which applications are invited should be either of the following: --

a) Three similar completed works/Projects where cost of Project is not less than the amount equal to 40% of Estimate Capital cost.

OR

b) Two similar completed works/Projects of similar nature where cost of project is not less than the amount equal to 50% of Estimate Capital cost.

OR

c) One similar completed project where cost of project is not less than the amount equal to 80% of Estimated Capital cost.

Similar Nature of Work Means- Construction of Sewerage Treatment Plant of capacity not less than 2.5 MLD along with laying of Sewer Network of length not less than 7.5 KM.

ii. Personal capabilities i.e. List of Manpower as per Annx Manpower

ii. Equipment capabilities i.e. List of Equipment as per Annx Equipment

iv. Key production rates i.e. Bid Capacity as described below.

B. In case Bidder is applying as Joint Venture-Pre-qualification of JV

i. Each of the JV partner (Except Lead bidder) should individually possess:-

Experience of successfully execution of a STP along with laying of Sewer Network where the cost of project is at least 25% of Estimated Capital Cost of the project put to tender.

ii. JV members are “jointly and severally responsible and liable” in a contract. For prequalification, the JV should fulfill the criteria specified above. The attributes to be evaluated will be the same as for Single Entity/individual contractor; however, certain parameters up to the specified limits have to be essentially met by them collectively, some by the lead partner, and some by the other partner, as briefly described below:”

4. The bidding documents had to be downloaded by 27th September, 2025, submission of bids starts on 27.09.2025 from 5.00 pm and the bid submission end date was 20.10.2025 upto 4 pm. The petitioner being fully eligible as a joint venture in M/s LNA Infra Projects Pvt. Ltd. was incorporated as a lead partner whereas M/s R.K.Gupta & Co was second partner, submitted its bid. It is stated that with a view to oust the competitors from bidding process and to favour some blue-eyed persons, a corrigendum came to be issued on 27.10.2025 i.e. the last date of submission of tender thereby extending the last date of submission of bid upto 31.10.2025 upto 2 pm. The requirement of experience was also changed from ten years to seven years. According to the petitioner, this decision was taken on 27.10.2025 at about 3.00 pm whereas the petitioner had submitted its bid prior to that. It is alleged that the same was done with the oblique motives to ensure that other bidders including the petitioner could be ousted from the bidding process.
5. It is stated that the official respondents have deliberately changed the criteria at the eleventh hour in order to ensure that the petitioner is ousted from the bidding process, unaware of the fact that the petitioner is otherwise eligible in terms of the second experience certificate of M/s R.K.Gupta and Co., which had been uploaded along with the bid.

The petitioner is stated to have requested respondent No.2 for restoration of the original qualification criteria vide communication dated 28.10.2025. Reliance has been placed on similar NITs for the similar nature of works, wherein, the bidders were required to have executed the similar works during the last seven years, which subsequently came to be changed to ten years by way of corrigendum.

6. The Joint Venture had submitted its bid along with requisite experience. So far as lead partner M/s LNA Infra Projects Pvt. Ltd. is concerned, it has the eligibility as it had the requisite experience during the last seven years. Similarly, the other partner in the Joint Venture i.e. M/s R.K.Gupta & Co. too had the experience. The experience certificate dated 06.06.2018, uploaded by the Joint Venture, had been issued by the Executive Engineer, Sewerage & Drainage Division (West), Jammu for successful completion of the work *“Designing, Providing, Constructing, Erecting, Commissioning start-up of 4.00 MLD capacities Sewerage Treatment Plant (STP) on Sequential Batch reactor (SBR) technology including laying of Trunk Sewerage laterals & House chamber/connections complete Sewerage Scheme for Migrant Township Jagti at Nagrota, Jammu.”*
7. Alongwith its bid, the petitioner has also uploaded experience certificate issued in favour of M/s R.K. Gupta & Co. for successfully completing the work namely *“Pollution abatement of River Devika and Tawi at Udhampur Town (J&K) under NRCP, GOI (Sewerage Package) amounting to Rs.1760 lacs”* as sub-contractor of M/s BGCC Pvt. Ltd. New Delhi.

8. The petitioner was issued notice on 17.11.2025 to explain its position on the ground that earlier the petitioner was issued a show cause because as per the official respondents, the principal contractor BJCC has stated that the scope of work, which was sub-contracted to M/s R.K.Gupta & Co. was extra-ordinary declared and was never completed in full for which ten percent liquidated damages have been imposed on the sub-contractor. The show cause notice was replied stating therein that the documents furnished by the petitioner are genuine,, true and duly certified by concerned authority, hence cannot be disregarded. Subsequently, the petitioner has been declared as technically non-responsive/disqualified on the basis of the minutes of meeting held on 20.11.2025, which action of the official respondents has been impugned in this writ petition.
9. It has been argued by the learned senior counsel appearing for the petitioners that the whole exercise to change the criteria has been done to oust the petitioner from the competition; technical bid of the petitioner has been declared non-responsive just to favour respondent No.5.
10. *Per contra*, in the reply filed by the official respondents, it is stated that in the two e-NITs, on which reliance has been placed by the petitioner, experience had been increased from seven years to ten years, on the specific relaxation granted by the Empowered Contract Committee (ECC). It is further stated that due to an inadvertent oversight, said relaxation was erroneously carried forwarded in the subject e-NIT, which discrepancy was timely identified and rectified through

corrigendum dated 27.10.2025, restoring the experience criteria to seven years strictly in terms of the provisions of the Manual of Procurement of Works-2022.

11. According to the official respondents, the petitioner has submitted his bid only on 30.10.2025 i.e. after the issuance of corrigendum and subsequently modified the bid on 06.11.2025. The allegation of the petitioner that the change in eligibility criteria was carried to favour some blue-eyed and to oust the petitioner has been specifically denied. Insofar as the experience certificate relied upon by the petitioner is concerned, it is stated that even if the experience certificate of M/s R.K.Gupta & Co for work of STP at Jagti executed as a Joint Venture for an amount of Rs.12.25 crores with 74% share is considered, the petitioner would still not satisfy the eligibility criteria because 74% of Rs.12.25 crores comes to Rs.9.06 crores. It is stated that even after escalating the cost to present level values by applying 7% annual enhancement, the escalated amount comes to Rs.13.51 crores. However, as per the qualification criteria, each partner of Joint Venture must independently possess experience of 25% of the estimated project cost. The project cost of tendered work is 55.11 crores, of which 25% comes to Rs.13.78 crores, it is stated, even on merits even if the certificate of 2018 is taken into account, the petitioner still falls short of mandatory experience of completing 25% value of the contract. With regards to the purported experience of Rs. 17.60 crores, the official respondents have specifically denied that that the said amount represents a single work and while evaluating the completion

certificates of the petitioner, it was verified from the issuing authority that the work “Pollution Abatement of River Devika and Tawi at Udhampur” were comprised of two different work orders issued by two different Chief Engineers. Both the principal contractor and the issuing authority have been asked for the portion of work they have executed. From the principal contractor, it was found that the petitioner has completed only 60-70% of 4 MLD STP work whereas integral part i.e. design of STP was framed by BGCC-principal contractor and from the issuing authority it was found that the firm has executed 91% of work.

12. It is stated that after verification from both from Principal Contractor M/s BGCC Pvt. Ltd. and from the concerned Executive Engineer concerned, it becomes clear that the amount relates to two different works, which have been deliberately projected as one M/s R.K.Gupta & Co.. Further, according to the official respondents, experience certificate relating to Patnitop work valued at Rs.11.60 crores is also non-qualifying since the work was found to be in JV from issuing authority with 70:30 share, which on evaluation comes below the required 25% threshold.
13. Claim of the petitioner has also been opposed by respondent No.5, who in its objections has stated that the contract committee after threadbare discussion on the financial bid, has accepted the financial bid of respondent No.5, as a consequence whereof, Letter of Intent dated 03.12.2025 stood issued in its favour. It is stated that M/s R.K.Gupta & Co., partner of the petitioner Joint Venture, neither had the experience of successful execution of a STP along with laying of sewer

network whose cost is 25% of the estimated capital cost of the project nor it had the general construction experience as required under Clause 2(II) A of the e-NIT.

14. Mr. Rahul Pant, learned senior counsel appearing for the petitioner has stated that in terms of E-NIT No.30 of 2024-25 dated 20.03.2025 for *survey design and execution of Sewerage scheme Katra Town under Pollution Abatement of River Ban Ganga at Katra*, petitioner was declared L-1 and respondent No.5 as L-3. In a subsequent E-NIT No.32 of 2024-25 dated 24.03.2025 for *Survey Design and Execution of Sewerage Scheme Samba Town under Pollution Abatement of River Basanter at Samba*, petitioner was again declared as L-1 and respondent No.5 as L-2. The official respondents deliberately cancelled the e-NITs only to accommodate respondent No.5. In this e-NIT also official respondents, in order to declare respondent No.5 as L-1, have rejected the technical bid of the petitioner.
15. Learned counsel for the official respondents has produced copy of the order dated 16.12.2025 by virtue of which experience certificate of the petitioner has been cancelled. The Executive Engineer, who was present in the Court at the time of hearing, stated that experience certificate of the petitioner was cancelled on the ground that procedure of verification was not followed before issuance of the certificate by the then Executive Engineer.
16. Heard learned counsel for the parties and perused the material on record.

17. Scope of judicial review in tender matters has been considered by Supreme Court in its various decisions. Hon'ble the Supreme Court in the case of **Tata Cellular Vs Union of India**, 1994 6 SCC 651, while considering the scope of judicial review in tender matters, elucidated following principles:

- 1) The modern trend points to judicial restraint in administrative actions.
- 2) The Court does not sit as a court of appeal but merely reviews the decision-making process.
- 3) The Court lacks the expertise to correct administrative decisions. If a review is permitted, it would be substituting its decision, which may be fallible.
- 4) The terms of the invitation to tender cannot be open to judicial scrutiny as they are in the realm of contract. Decisions to accept or award contracts are reached through several tiers and are qualitative, often made by experts.
- 5) The Government must have the freedom of contract. Fair play in administrative actions is necessary, but decisions must be free from arbitrariness, bias, or mala fides.
- 6) Quashing decisions can impose heavy administrative burdens and unbudgeted expenditures on the administration and lead to increase and unbudgeted expenditure.

18. After Tata cellular (supra), there is a long series of judgments of the Supreme Court on the scope of judicial review in tender matters, some of them are **Jagdish Mandal v. State of Orissa**, (2007) 14 SCC 517, **Midhigan Rubber v. State of Karnataka**, (2012) 8 SCC 216, **Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.**, (2016) 16 SCC 818, **M/s Agmatel India Pvt. Ltd. v. M/s ResourSYS Telecom**, 2022 Legal Eagle (SC) 98, **Airport Authority of India v.**

**Centre for Aviation Policy, Safety & Research (CAPSR), (2022)
SCC Online SC 1334.**

19. Hon'ble the Supreme Court in the case of **Balaji Ventures Pvt. Ltd. V. Maharashtra State Power Generation Company Ltd., 2022 LiveLaw (SC) 295** has observed that *“the eligibility criteria in the tender document applied to all bidders. The owner has the freedom to set criteria unless they are arbitrary or mala fide. Bidders cannot challenge criteria that do not suit them. Courts have limited roles in reviewing tender conditions, as it is an offer to compete”*. In *Airport Authority of India (supra)*, it has been observed by the Supreme Court that *“tender terms are within the domain of the tenderer and not open to judicial scrutiny unless arbitrary, discriminatory, or mala fide. The Government must have a free hand in setting terms.”*
20. The principles which emerge from a series of decisions of the Supreme Court are that:
- i. The tender inviting authority is free to set eligibility criteria and conditions unless they are arbitrary, discriminatory, or mala fide.*
 - ii. The author of the tender document is best suited to understand and interpret its requirements.*
 - iii. If two interpretations are possible, the author's interpretation must be accepted.*
 - iv. If the tender authority follows healthy standards and norms, court interference is limited.*
 - v. Courts reviewing the decision-making process, not act as courts of appeal.*

vi. There should be no cancellation of awards due to procedural errors or wrongful exclusion; unsuccessful bidders can seek damages in civil court.

vii. Courts have no role in imposing fair, wiser, or logical decisions on tender authorities.

viii. In most cases, the Supreme Court upholds the views of the tender inviting authority unless the terms are arbitrary, discriminatory, or mala fide.

21. In view of the settled legal position, the scope of judicial review in tender matters is only to the extent of arbitrariness, mala fide or discrimination.
22. The allegation of the petitioner is that the eligibility criterion in respect of construction experience has been changed from ten years to seven years after the petitioner has submitted its bid. The corrigendum, extending the last date of submission of bids to 31.10.2025 upto 2 pm and changing of construction experience during last seven years instead of ten years came to be issued on 27.10.2025 whereas the petitioner has submitted its bid on 30.10.2025. In this view of the matter, one of the grounds raised by the petitioner to assail the rejection of his technical bid on the allegation that the change in experience criteria was effected when the petitioner already stood submitted its bid falls flat, as such, deserves rejection.
23. The other ground raised by the petitioner is with regard to the construction experience certificate dated 17.07.2023, to execute similar nature of works amounting to Rs.17.60 Crores, which fulfils the eligibility criteria of seven years has been disputed by the official

respondents. According to the official respondents, the amount does not represent a single work; the amount relates to two different works.

24. Experience is sought from the tenderer/bidder so as to assess its capability to execute the work for which bids are invited. To assess the capability of a bidder is a technical issue, which ought to be left to be decided by the experts in the field.
25. The Supreme Court in **Silppi Constructions Contractors v. Union of India and others, (2020) 16 SCC 489**, has held thus:

“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. The Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give ‘fair play in the joints’ to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.”

26. Supreme Court in the matter of **N.G Projects Limited vs. Vinod Kumar Jain and Others, (2022) 6 SCC 127** has held that the Court should refrain from imposing its decision over the authority on the issue of acceptance or non-acceptance of the bid of a tenderer and that even if the Court finds there is total arbitrariness or that the tender has been granted in a *mala fide* manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for wrongful exclusion rather than to injunct the execution of the contract. The view taken by the Hon'ble Supreme Court in the above judgment is as under:

"23. In view of the above judgments of this Court, the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues. The approach of the Court should be not to find fault with magnifying glass in its hands, rather the Court should examine as to whether the decision-making process is after complying with the procedure contemplated by the tender conditions. If the Court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract. The injunction or interference in the tender leads to additional costs on the State and is also against public interest. Therefore, the State and its citizens suffer twice, firstly by paying escalation costs and secondly, by being deprived of the infrastructure for which the present day Governments are expected to work."

27. The award of contract is essentially a commercial transaction and in arriving at a commercial decision considerations which are paramount are commercial considerations. In the instant case, the core issue

revolves around the experience of the petitioner, which is essentially a technical issue and in view of the ratio of the judicial pronouncements made by the Supreme Court, technical issues shall be best left to be decided by the experts in the field as the judges do not have the necessary expertise to decide on the technical issues.

28. In view of the above, the writ petition is found to be without any merit, hence dismissed.

**(Moksha Khajuria Kazmi
Judge**

Jammu:
30.05.2026
Vinod

Whether the judgment is reportable: No